

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KYLE LANG

Claimant

VS.

SHAWNEE COUNTY

Respondent,
Self-Insured

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Docket No. 1,009,181

ORDER

Respondent appealed the June 10, 2003 preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

This is a claim for a February 10, 2003 accident. In the June 10, 2003 Order, Judge Benedict granted claimant's request for workers compensation benefits.

Respondent contends Judge Benedict erred. First, respondent argues that claimant was not acting within the course and scope of his employment at the time of the injury. Second, respondent argues that claimant shot himself in the left knee to avoid military service. Accordingly, respondent argues that claimant did not sustain an accidental injury that arose out of and in the course of employment.

Conversely, claimant contends the June 10, 2003 Order should be affirmed. Claimant argues he was accidentally shot in the knee as he wrestled with a prowler outside his home. Claimant, who was a sheriff deputy but who was off duty at the time of the incident, contends his alleged accident arose out of and in the course of his employment with respondent.

The only issue before the Board on this appeal is whether claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

In May 2002, claimant began working for respondent as a sheriff deputy. In approximately January 2003, claimant had completed sufficient training that he was released to work on his own and have his own patrol car.

On February 10, 2003, while at home claimant was shot in the left knee with his own service weapon. The Board affirms the Judge's finding that claimant was shot while struggling with a prowler. At this juncture of the claim, the Board rejects respondent's argument that claimant shot himself to avoid being deployed with his Marine reserve unit. The Board finds that respondent's argument is based upon conjecture and speculation. When considering the entire record, the Board finds that claimant had accepted his deployment and was making final preparations for his departure.

The Judge had the opportunity to assess claimant's credibility during his preliminary hearing testimony. And the Judge must have found that testimony credible as the Judge granted claimant's request for benefits despite the testimony presented by respondent's witnesses. In light of reports to the authorities from nearby residents of prowlers in the area the night of the incident, the Board finds that claimant's description of the accident is credible.

The Board concludes that claimant's accident arose out of and in the course of claimant's employment as a sheriff deputy. At the time of the accident, claimant was performing the duties of a sheriff deputy. Respondent has a general policy that off duty officers "shall not ordinarily engage in any criminal investigation or other law enforcement activity unless ordered to do so by their immediate supervisor or other supervisor in that employee's chain of command."¹ But there are exceptions to that rule: the escape of the criminal suspect, property damage, death or bodily harm or the risk that evidence will be irretrievably lost. The issue is not whether claimant was protecting his own property at the time of the accident. Instead, the issue is whether claimant was engaged in a law enforcement activity at the time of the accident, which he was.

The Board adopts the findings and conclusions set forth by the Judge in the June 10, 2003 Order to the extent they are not inconsistent with the above and they are supported by the record.

WHEREFORE, the Board affirms the June 10, 2003 Order.

IT IS SO ORDERED.

¹ P.H. Trans., Resp. Ex. A.

Dated this ____ day of July 2003.

BOARD MEMBER

c: Thomas G. Lemon, Attorney for Claimant
Jeff K. Cooper, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director